

W. D. GILMER,)
)
 Plaintiff,)
)
 v.) Case No. 05-0560-CV-W-ODS
)
 JAMES R. DERTING and)
 RONALD E. PARTEE,)
)
 Defendants.)

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filing fee in this matter, the Court would be unable to accept Plaintiff's proposed Complaint. Plaintiff alleges that he is seeking damages for attorney malpractice, a state law claim. Unless Defendants reside in states other than Plaintiff, this Court lacks jurisdiction over this case. 28 U.S.C. § 1332. It is unclear where Defendants reside from Plaintiff's Complaint, and Plaintiff has the burden of proving that jurisdiction exists. See Osborn v. United States, 918 F.2d 724, 729 (8th Cir. 1990).

Plaintiff has also requested that the Court appoint counsel for him pursuant to 28 U.S.C. § 1915 (e)(1). Under this provision, the Court may "request an attorney to represent any person unable to afford counsel." Id. This decision is left to the sound discretion of the trial court. When ruling on a motion for appointment of counsel, the court should consider: (1) the merits of the claim; (2) the plaintiff's efforts to obtain counsel; and (3) the plaintiff's financial situation. Slaughter v. City of Maplewood, 731 F.2d 587, 590 (8th Cir. 1984); Hale v. North Little Rock Housing Auth., 720 F.2d 996, 998 (8th Cir. 1983). The Court has already addressed the merits to Plaintiff's claims.

Upon review of factors set forth in Slaughter and Hale, the Court has determined that Plaintiff does not qualify for in forma pauperis status and has not demonstrated a reasonable diligence under the circumstances to retain counsel. Accordingly, Plaintiff's requests to proceed in forma pauperis and for appointment of counsel are denied.

IT IS SO ORDERED.

DATE: June 22, 2005

/s/ Ortrie D. Smith
ORTRIE D. SMITH, JUDGE
UNITED STATES DISTRICT COURT